

DETAILED ACTION

1. The amendment filed August 16, 2011, is acknowledged and has been entered. Claim 4 has been cancelled. Claims 1, 2, 5, 6 and 18-20 have been amended. Claims 28-32 have been added.

2. Claims 1-3, 5-11, 18-20, 23-25 and 28-32 are pending in the application. Claims 10, 11 and 25 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made without traverse.

3. Claims 1-3, 5-9, 18-20, 23-24 and 28-32 are currently subject to the following election of species requirement necessitated by the addition of new claims in the amendment filed August 16, 2011. As set forth in MPEP 808.01(a):

If applicant presents species claims to more than one patentably distinct species of the invention after an Office action on only generic claims, with no restriction requirement, the Office may require the applicant to elect a single species for examination.

Election/Restrictions

4. The newly added claims of the elected and examined invention are directed to more than one species of the generic invention, wherein the method further comprises administering: a) a bispecific antibody construct, b) a targeted toxin or c) an antineoplastic agent.

The species are independent or distinct because the claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record. For example, each species further administered to the patient is a structurally and functionally distinct species. Accordingly, a thorough search of the technical literature is particularly pertinent, and since such a search is performed by a series of key word

queries of relevant databases, each search would be performed using a different set or series of key words.

Therefore, the examination of claims directed to any one species of requires a unique search that is not required for examination of claims directed to any other species and will not provide adequate information regarding any other. See MPEP § 809.

5. Accordingly, Applicant is further required under 35 U.S.C. 121 to elect a species set forth above for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

As described above, there is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

A telephone call was made to Steven Highlander on October 17, 2011, to request an oral election to the above requirement, but did not result in an election being made.

6. **Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined** even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at

the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. Applicant is further reminded that a generic claim may be allowable over the prior art, but not necessarily over 35 U.S.C. 101 and 112.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brad Duffy whose telephone number is (571) 272-9935. The examiner can normally be reached at Monday through Thursday from 6:15 AM to 4:45PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Misook Yu, can be reached at (571) 272-0839. The official fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1643

Information regarding the status of an application may be obtained from the patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully,
Brad Duffy
571-272-9935

/Brad Duffy/
Examiner, Art Unit 1643
October 21, 2011